

NATIONAL CONFERENCE OF INSURANCE LEGISLATORS
NCOIL-NAIC DIALOGUE
SAN ANTONIO, TEXAS
NOVEMBER 13, 2015
DRAFT MINUTES

The National Conference of Insurance Legislators (NCOIL) NCOIL-NAIC Dialogue met at the Hilton Palacio del Rio in San Antonio, Texas, on Friday, November 13, 2015, at 2:15 p.m.

Sen. James Seward of New York, Chair of the Committee, presided.

Other members of the Committee present were:

Sen. Jason Rapert, AR	Rep. George Keiser, ND
Sen. Travis Holdman, IN	Sen. David O'Connell, ND
Rep. Matt Lehman, IN	Sen. Neil Breslin, NY
Rep. Joseph Fischer, KY	Rep. Robert Hackett, OH
Sen. Dan "Blade" Morrish, LA	Rep. Bill Botzow, VT

Other legislators present were:

Assem. Ken Cooley, CA	Rep. Ken Goike, MI
Rep. Janak Joshi, CO	Rep. Michael Webber, MI
Sen. Rosalyn Baker, HI	Sen. Jerry Klein, ND
Rep. Romy Cachola, HI	Rep. Don Flanders, NH
Rep. Martin Carbaugh, IN	Sen. Robert Hayes, SC
Rep. Peggy Mayfield, IN	Rep. Maureen Dakin, VT
Rep. Ronald Crimm, KY	Rep. Kathie Keenan, VT
Rep. Jeff Greer, KY	Sen. Jan Angel, WA
Rep. Steve Riggs, KY	Rep. Graham Hunt, WA
Rep. Bart Rowland, KY	Rep. Tyler August, WI
Rep. Tommy Thompson, KY	Rep. Dan Zwonitzer, WY
Rep. Mike Huval, LA	

Also in attendance were:

Susan Nolan, Nolan Associates, NCOIL Executive Director
Candace Thorson, Nolan Associates, NCOIL Deputy Executive Director
Andrew Williamson, Nolan Associates, NCOIL Director of Legislative Affairs

MINUTES

Upon a motion made and seconded, the Committee unanimously approved the minutes of its July 17, 2015, meeting in Indianapolis, Indiana.

FEDERAL INSURANCE OFFICE (FIO)/FEDERAL ADVISORY COMMITTEE ON INSURANCE (FACI)
Commissioner Ted Nickel of Wisconsin reported that the relationship between the National Association of Insurance Commissioners (NAIC) and FIO/FACI is challenging. He said FIO has called for an international covered agreement on reinsurance collateral. He said the NAIC has expressed concern with this because 32 states, representing 66 percent of the United States' market premium, already have passed reinsurance collateral reform.

Commissioner Nickel said that the NAIC reviews FIO reports, including its annual reports and a reinsurance report. He said that in September of 2015, FIO released its third annual report on the insurance industry, which he said included an overview and analysis of various U.S. insurance sectors.

In response to a question from Sen. Seward, Commissioner Nickel said that supporters of the covered agreement aim for mutual recognition between U.S. and non-U.S. insurance regulation.

In response to a question from Rep. Botzow, Commissioner James Donelon (LA) said the NAIC has attempted to advise and educate several other countries on the success of the U.S. system but has met with resistance.

AFFORDABLE CARE ACT (ACA) IMPLEMENTATION

Commissioner Nickel reported that the NAIC will be tracking open enrollment in health insurance plans until the enrollment period ends on January 31, 2016. He said the NAIC is examining the 2014 Risk Corridor Program, including impacts on carriers who were expecting full payment of their risk corridor liabilities and received on average 12.6 percent of their requested payments. He reported that the NAIC Statutory Accounting Principles (E) Working Group is tasked with attempting to account for those payments.

Commissioner Nickel noted that 12 of the 23 health insurance co-ops have failed, with others on unstable financial footing. He reported that the U.S. House of Representatives Energy and Commerce Oversight Committee and the House Ways and Means Committee have held hearings on the troubles facing co-ops and that the NAIC has participated in such hearings. He said that there also has been proposed legislation to assist struggling co-ops.

Commissioner Nickel stated that the NAIC is monitoring the federal definition of small-group plans after the passage of the federal PACE Act signed by the President. He said that the NAIC had endorsed that legislation and that it returns the federal small-group definition to between one and 50 employees. He noted that some states have expanded the definition to between one and 100 employees and that such states included California, Colorado, Louisiana, New York, Vermont, and Virginia, as well as D.C.

Commissioner Nickel stated that other issues the NAIC will focus on in the upcoming year are the possible repeal of the "Cadillac tax," questions and concerns regarding network adequacy, essential health benefits (EHB), and the possible repeal of health insurance premium taxes in U.S. territories.

In response to a question from Rep. Keiser, Commissioner Donelon said that the NAIC needs to examine traditional "grandfathered" and Employee Retirement Income Security Act of 1974 (ERISA) plans. Commissioner Donelon noted that some "grandfathered plans" were being discontinued and that there is a relationship between that and higher deductibles.

REGULATORY EFFORTS REGARDING CYBER-RISK AND INSURANCE

Commissioner Nickel reported that an NAIC Cybersecurity (EX) Task Force had drafted 12 principles and also created a Cybersecurity Bill of Rights to ensure better protection of

consumer data. He said this is uncharted territory and that the NAIC understands the importance of regulators being able to protect consumer data from cyber attacks.

Sen. Seward said that the New York State Department of Financial Services has asked all companies to submit their cyber-security procedures. He said that during that process, people realized that if information is stored in one place, it would be easy for a hacker to break into the system and access all that confidential information.

Rep. Keiser noted the importance of creating criteria that must be met without creating a standardized process that would be subject to security risk.

NAIC UNCLAIMED PROPERTY INITIATIVE

Commissioner Donelon reported that an NAIC Unclaimed Benefits Model Drafting Subgroup had begun the process of developing a new NAIC model law relating to unclaimed property and recently decided to do so by using a section-by-section approach with a comparison chart of the provisions in a “lead states” model and in the NCOIL *Unclaimed Life Insurance Benefits Act*. He said that the Subgroup anticipated releasing an initial draft of the proposed NAIC model for a three-week comment period following the NAIC Fall Meeting. He acknowledged that the NCOIL model had been adopted by 19 states.

Commissioner Donelon noted that Oklahoma, Ohio, Louisiana, New York, and others have adopted a “policy search finder process” that has worked well over the last five years. He said that Louisiana has added a disclaimer that not all companies have electronic data for their oldest policies.

PRICE OPTIMIZATION

Commissioner Donelon said the NAIC Casualty and Actuarial Statistical (C) Task Force has been charged with developing guidelines in a “white paper” on the concept of price optimization. He stated that price optimization uses technology to analyze consumer practices and attempts to maximize pricing by charging different rates to individual customers who represent the same risk to those companies.

Commissioner Donelon noted that there has been sufficient pushback from consumer groups that Louisiana, among other states, has rejected filings that use price optimization. He reported that every state, with the exception of Illinois, has the same definition for rate setting and requires that rates cannot be unfairly discriminatory.

In response to a question from Sen. Seward, Commissioner Donelon said the “white paper” would be released at the NAIC Fall Meeting.

ADJOURNMENT

There being no further business, the Committee adjourned at 3:15 p.m.